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**Grievances, Hearings and Investigations**

**NON-DISCRIMINATION POLICY AND COMPLAINT PROCEDURE**

**I. AUTHORITY:**

- A. The U.S. Equal Employment Opportunity Act of 1972 (Title VII of the Civil Rights Act of 1964, as amended), Section 703 (a) (42 USC 2000e-2(a)), as amended. Section 701(k) (42 USCS 2000e), and Section 704(a) (42 USCS 2000e-3).
- B. State of California Fair Employment Practices Act Part 2.8, Division 3, Title 2: effective January 1, 1991.
  - 1. Section 12941. Discrimination on the basis of Age.
- C. The U.S. Age Discrimination in Employment Act (29 USC) Section 623, as amended. Prohibition of age discrimination.
  - 1. Section 631, as amended. Age Limits.
- D. Rehabilitation Act of 1973, as amended (29 USCS 794 (a), as amended).
  - 1. Section 504.
  - 2. Section 706(8)(A).
- E. The Americans With Disabilities Act of 1990
  - 1. Section 12112(a).
  - 2. Section 12111(8).
- F. Family and Medical Leave Act (FMLA).
  - 1. 29 USCS 2612(a).
  - 2. Section 2614. Employment and benefits protection.
- G. The Human Dignity Ordinance (Chapter 5, Article 2), San Diego Municipal Code, Division 96 (4/16/90). Prohibition of Sexual Orientation Discrimination.

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1. Section 52.9603.

H. Aids Policy (Chapter 5, Article 2), San Diego Municipal Code, Division 95 (2/22/88). Prohibition of AIDS, ARC or ARS Related Discrimination.

1. Section 52.9504.

I. City Charter Section 37. PERSONNEL DIRECTOR.

J. City Charter Section 128. INVESTIGATIONS.

K. Civil Service Rule XVI. DISCRIMINATION COMPLAINTS.

II. POLICY:

A. EQUAL TREATMENT

All employees shall be treated equally without regard to race, color, sex, creed religion, national origin, age, marital status, ancestry, medical condition (i.e., AIDS/HIV, history of cancer), pregnancy, disability, or sexual orientation in all employment matters, including, but not limited to, promotions, transfers, job rotation, training, work assignments, hiring, merit increases, overtime, awards and discipline. It is the expectation that every employee will support the principles of equal opportunity and equal treatment and that every City employee is provided a discrimination-free environment.

B. HARRASSMENT-FREE WORK ENVIRONMENT

All employees shall be provided a work environment free from harassment. Harassment creates a negative atmosphere that reduces work productivity and morale, undermines the integrity of the workplace, and destroys professionalism. Harassment includes any unwelcome, unsolicited and/or unwanted behavior towards coworker, subordinates, supervisors, or volunteers, that offends, humiliates, embarrasses, intimidates, or otherwise causes distress because of a person's race, color, sex creed, religion, national origin, age, marital status, ancestry, medical condition (i.e., AIDS/HIV, history of cancer), disability, or sexual orientation. Examples include the use of derogatory comments, slurs,

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jokes, or derogatory pictures, cartoons, or posters.

The City has a Zero Tolerance Policy on harassment. This means the City will not condone, permit, or tolerate harassment of employees in any manner whatsoever. It is the intention of the City to ensure that this policy is fully enforced and that every City employee is provided a harassment-free environment.

**III. PROCEDURE:**

**A. Filing Complaints:**

1. A complaint of discrimination on the basis of race, color, religion, sex, national origin, ancestry, age, medical condition (history of cancer only), marital status, sexual orientation, or physical or mental disability may be initiated by an employee, former employee, or applicant for employment concerning an employment practice of the City.
  - a. Employees may choose to file a complaint with the Department Equal Opportunity Liaison who serves as an initial point of contact for employees and management regarding the early resolution of issues pertaining to sexual harassment, biases, or discrimination in the workplace.
  - b. Complainants may represent themselves or be represented by another person at the presentation of their complaint and/or throughout the investigative and resolution process.
  - c. An employee may meet with the Personnel Department's Equal Employment Investigative Officer (E.E.I.O.) regarding a complaint during regularly scheduled work hours. For the purposes of coordination between the work schedule or duties of the complainant and the operational demands of that department, requests to meet with the E.E.I.O. during working hours must be approved by the employee's supervisor. An employee who requests it shall be granted reasonable time off for this purpose.
2. Complaints should always be filed within the time frame established by

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State and Federal investigative agencies which is one year from the occurrence.

**B.     Notice to Department Head:**

The appropriate managerial or nonmanagerial department head and the City Manager will be notified in writing within five working days of receipt of a formal complaint. Such notice shall include the name of the complainant, and the alleged discriminatory employment practice.

**C.     Acceptance or Rejection of Complaints:**

1.     Upon receipt of a complaint, the E.E.I.O. shall make whatever inquiries are necessary to establish:
  - a.     whether the complaint is within the authority of the E.E.I.O., and
  - b.     whether reasonable grounds exist to establish the possible validity of the complaint.

The E.E.I.O. shall also advise the complainant of rights to pursue the complaint through the appropriate State or Federal agencies.

2.     If the E.E.I.O. determines that the complaint does not fall within the authority of the E.E.I.O. or sufficient grounds do not exist to establish the possible validity of the complaint, the complaint will be rejected. If a complaint is rejected, the E.E.I.O. shall so notify the complainant and shall inform the complainant of rights to pursue the complaint through the appropriate State or Federal agencies.
3.     If the E.E.I.O. determines that the complaint falls within the authority of the E.E.I.O. and reasonable grounds exist to establish the possible validity of the complaint, the E.E.I.O. must accept the complaint.

**D.     Investigation:**

1.     The E.E.I.O. shall promptly conduct an investigation of the complaint, including:

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- a. a thorough review of the circumstances under which the alleged discriminatory act occurred,
    - b. the treatment of the complainant as compared with the treatment of other employees in the organizational unit in which the alleged discriminatory act occurred, and
    - c. any policies and practices, verbal or written, related to the work situation which may constitute, or appear to constitute, discrimination because of race, color, religion, sex, national origin, ancestry, age, medical condition, marital status, physical or mental disability, or sexual orientation.
  - 2. A complainant may withdraw a complaint at any time by notification to the E.E.I.O. The E.E.I.O. may cancel a complaint by written notification to the complainant under the following circumstances:
    - a. the complainant is unavailable, or
    - b. the complainant refuses to pursue the complaint, or
    - c. the complainant files a lawsuit, with similar allegations against the City, in a State or Federal court.
- E. Determination and Mediation:
- 1. "No Cause" Findings.
    - a. If, following an investigation, the E.E.I.O. finds that there is no substantiating evidence for a charge of discrimination, the E.E.I.O. shall discuss this finding with the Personnel Director.
    - b. If the Personnel Director concurs in the findings of the E.E.I.O., the E.E.I.O. shall notify the complainant and, as appropriate, the City Manager and/or non-managerial Department Head of the decision.
    - c. In the event of a "no cause" finding, the complainant or respondent

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may appeal the finding to the Civil Service Commission within ten (10) working days of being notified of the finding. Appeal requests must be in writing and based on one or more of the following reasons:

- (1) The investigation was incomplete and/or improperly conducted.
- (2) The conclusions of the investigation are incorrect based on the evidence.
- (3) The conclusions of the investigation are incorrect based on the law.

The notice of appeal must provide specific information in support of the appeal based on one or more the above reasons.

- d. The Personnel Director or his/her designee shall acknowledge all appeals and inform the Appellant whether the appeal meets the requirements prescribed above. If the appeal meets the requirements, the EEIO will respond with a written report within ten (10) working days.
- e. The appeal and the EEIO response will be considered by the Civil Service Commissioner acting as a single Hearing Officer who will be assigned in the manner prescribed for a suspension appeal in Personnel Manual Index Section L-3. The appeal will be limited to issues raised in the notice of appeal. The Hearing Officer will then give a written response to the appeal request either (1) accepting the appeal, (2) denying the appeal, or (3) asking one or both parties to provide more information.
- f. If the appeal is accepted, the Hearing Officer will determine the manner in which to conduct the appeal. In the case of an appeal based upon the assertion that "the conclusions of the investigation are incorrect based on the law", the Hearing Officer shall determine whether the appeal will be conducted by convening a hearing or may require written briefs and decide the matter on the

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briefs alone.

- g. If a hearing is convened, the E.E.I.O. and then the appellant will present evidence and testimony concerning those issues accepted as the basis of the appeal. Upon conclusion of the hearing or upon conclusion of the review of the briefs:
  - (1) If the Hearing Officer concurs with the "no cause" findings, the E.E.I.O. shall notify the appellant of his or her rights to pursue the complaint through the appropriate State or Federal agencies.
  - (2) If the Hearing Officer does not concur with the "no cause" findings, then he or she may order any remedy provided in the Civil Service Commission Rules.
  - (3) In all cases the Hearing Officer's decision will exhaust the employee's administrative remedies within the City of San Diego's Discrimination Complaint Procedure. No further review by the Civil Service Commission will be permitted.

In the event that a disciplinary appeal hearing related to the matter comes before the Civil Service Commission, the Commissioner acting as the Hearing Officer in the prior "no cause" appeal shall not participate in any disciplinary appeal or in the ratification of any finding(s) from an appeal.

- 2. "Cause" Findings.
  - a. If, following an investigation, the E.E.I.O. finds that there is reasonable cause for a charge of discrimination, the E.E.I.O. shall discuss this finding with the Personnel Director, and, as appropriate, the City Manager and/or non-managerial department head.
  - b. If the Personnel Director concurs in the finding of the E.E.I.O., the E.E.I.O. shall attempt to mediate the complaint to the mutual satisfaction of both the complainant and the appropriate

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department head.

- c. The E.E.I.O. will submit any mediation agreement to the Personnel Director and, as appropriate, the City Manager and/or non-managerial department head for review. If the Personnel Director concurs with the agreement and the actions required are within the administrative discretion of the Personnel Director, the Personnel Director will sign the agreement and it will be binding on the parties. If a mediation agreement requires action outside of the administrative discretion of the Personnel Director, the agreement will be brought before the Civil Service Commission for review.
- d. If mediation is not possible, the complainant or respondent may appeal to the Civil Service Commission within ten (10) working days of being notified of the failure of the mediation process. Appeal requests must be in writing and based on one or more of the following reasons:
  - 1. The investigation was incomplete and/or improperly conducted.
  - 2. The conclusions of the investigation are incorrect based on the evidence.
  - 3. The conclusions of the investigation are incorrect based on the law.

The notice of appeal must provide specific information in support of the appeal based on one or more of the above reasons.

- e. The Personnel Director or his/her designee shall acknowledge all appeals and inform the Appellant whether the appeal meets the requirements prescribed above. If the appeal meets the requirements, the EEIO will respond with a written report within ten (10) working days.
- f. The appeal and the EEIO response will be considered by the Civil



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Service Commissioner acting as a single Hearing Officer who will be assigned in the manner prescribed for a suspension appeal in Personnel Manual Index Section L-3. The appeal will be limited to issues raised in the notice of appeal. The Hearing Officer will then give a written response to the appeal request either (1) accepting the appeal, (2) denying the appeal, or (3) asking one or both parties to provide more information.

- g. If the appeal is accepted, the Hearing Officer will determine the manner in which to conduct the appeal. In the case of an appeal based upon the assertion that "the conclusions of the investigation are incorrect based on the law", the Hearing Officer shall determine whether the appeal will be conducted by convening a hearing or may require written briefs and decide the matter on the briefs alone.
- h. If a hearing is convened, the E.E.I.O. and then the appellant will present evidence and testimony concerning those issues accepted as the basis of the appeal. Upon conclusion of the hearing or upon conclusion of the review of the briefs:
  - (1) If the Hearing Officer concurs with the AcauseA finding, the E.E.I.O. shall notify the appellant of his or her rights to pursue the complaint through the appropriate State or Federal agencies.
  - (2) If the Hearing Officer does not occur with the Acause@ finding, he or she may order any remedy provided in the Civil Service Commission Rules.
  - (3) In all cases the Hearing Officer's decision will exhaust the employee=s administrative remedies within the City of San Diego=s Discrimination Complaint Procedure.

The findings of the Hearing Officer will be considered administratively final. No further Civil Service Commission review will be permitted.

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In the event that a disciplinary appeal related to the matter comes before the Civil Service Commission, the Commissioner acting as the Hearing Officer in the prior “cause” appeal shall not participate in any disciplinary appeal or in the ratification of any finding(s) from an appeal.

**F. Compliance Reviews:**

In cases where the Civil Service Commission makes a determination that an employment practice was discriminatory and orders that practice to be corrected, the E.E.I.O. will conduct periodic compliance reviews to ensure that corrected action is taken.

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**I. AUTHORITY:**

- A. The U.S. Equal Employment Opportunity Act of 1972 (Title VII of the Civil Rights Act of 1964, as amended), Section 703 (a) (42 USC 2000e-2(a)), as amended. Section 701(k) (42 USCS 2000e), and Section 704(a) (42 USCS 2000e-3).

1. Section 2000e-2(a) - Employer Practices.

It shall be an unlawful employment practice for an employer---

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex, or national origin.

2. Section 2000e(k)

The terms "because of sex" or "on the basis of sex" include, but are not limited to, ... pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes ...

3. Section 2000e-3(a)

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, ... because he has opposed ... an unlawful employment practice ..., made a charge, testified, assisted, or participated in any manner in an

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investigation, proceeding, or hearing.

**B.    State of California Fair Employment Practices Act Part 2.8, Division 3, Title 2:  
          effective January 1, 1991.**

**1.       Section 12940. ...; Unlawful employment practices.**

It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

a.       For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, mental condition, marital status, or sex of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment.

(1)      Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties... or cannot perform those duties in a manner that would not endanger his or her health or safety or the health and safety of others...

(2)      Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties... or cannot perform those duties

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in a manner that would not endanger the employee's health or safety or the health or safety of others.... Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others....

- (3) Nothing in this part relating to discrimination on account of marital status shall do either of the following: (A) affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the Commission, (B) prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents....
- b. For any person to discriminate against another person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of the person discriminated against.
- c. For any employer or employment agency, unless specifically acting in accordance with Federal Equal Employment Opportunity guidelines and regulations approved by the Commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental

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disability, medical condition, marital status, or sex, or any intent to make that limitation, specification or discrimination. Nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of the applicant if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

- d. For any employer, labor organization, employment agency, or person, to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified or assisted in any proceeding under this part.
- e. For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

2. Section 12941. Discrimination on the basis of Age.

- a. It is an unlawful employment practice for an employer to refuse to hire or employ, or to discharge, dismiss, reduce, suspend, or demote, any individual over the age of 40 on the ground of age, except in cases where the law compels or provides for such action. This section shall not be construed to make unlawful the rejection or termination of employment where the individual applicant or employee failed to meet bona fide requirements for the job or position sought or held, ...nor shall this section preclude such physical and medical examinations of applicants and employees as an employer may make or have made to determine fitness for the job or position sought or held.
- b. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority

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and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, and trade schools shall not, in and of themselves, constitute a violation of this section.

- c. This section shall not limit the right of an employer...to select or refer the better qualified person from among all applicants for a job. The burden of proving a violation of this section shall be upon the person or persons claiming that the violation occurred.

C. The U.S. Age Discrimination in Employment Act (29 USC) Section 623, as amended. Prohibition of age discrimination.

- 1. It shall be unlawful for an employer-
  - a. to fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
  - b. to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age...
- 2. It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment...because such individual ... has opposed any practice made unlawful by this section, or because such individual ... has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.
- 3. It shall be unlawful for an employer ... to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer ... indicating any preference, limitation, specification, or discrimination, based on age.

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4. It shall not be unlawful for an employer ... to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual ... because of the age of such individual; or to observe the terms of a bona fide employee benefit plan:
    - a. where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker...; or
    - b. that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.
  5. Section 631, as amended. Age Limits.
    - a. The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.
- D. Rehabilitation Act of 1973, as amended (29 USCS 794 (a), as amended).
1. Section 504.

No otherwise qualified individual with a disability in the United States, as defined in Section 7(8)[29 USCS 706(8)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...
  2. Section 706(8)(A).
    - a. Except as otherwise provided in subparagraph (B), the term "individual with a disability" means any individual who (i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment and (ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided...



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- b. The term "individual with a disability" means... any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.
- c. For purposes of Sections 503 and 504 of this title as such sections relate to employment, the term Aindividual with a disability@ does not include any individual who is an alcoholic or whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

E. The Americans With Disabilities Act of 1990

1. Section 12112(a).

- a. No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.
- b. As used in subsection (a), the term "discriminate" includes--
  - (1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee...;
  - (2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or

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referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

- (3) utilizing standards, criteria, or methods of administration:
  - (a) that have the effect of discrimination on the basis of disability; or
  - (b) that perpetuate the discrimination of others who are subject to common administrative control;
- (4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of a known disability of an individual with whom the qualified individual is known to have a relationship or association;
- (5) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity ...

2. Section 12111(8).

- a. The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.
- b. The term "reasonable accommodation" may include --
  - (1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;

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and

- (2) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

F. Family and Medical Leave Act (FMLA).

1. 29 USCS 2612(a).

- a. Entitlement to leave. An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:
  - (1) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
  - (2) Because of the placement of a son or daughter with the employee for adoption or foster care.
  - (3) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
  - (4) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
- b. Expiration of entitlement. The entitlement to leave ... for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

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2.     Section 2614. Employment and benefits protection.

a.     Restoration to position.

(1)    In general ... any eligible employee who takes leave ... for the intended purpose of the leave shall be entitled, on return from such leave --

(a)    to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(b)    to restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2)    The taking of leave. . .shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced ...

b.     Maintenance of health benefits.

(1)    During any period that an eligible employee takes leave..., the employer shall maintain coverage under any "group health plan" . . . for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave.

G.     The Human Dignity Ordinance (Chapter 5, Article 2), San Diego Municipal Code, Division 96 (4/16/90). Prohibition of Sexual Orientation Discrimination.

1.     Section 52.9603.

a.     Employers -- Discrimination. It shall be an unlawful employment practice for an employer to fail or refuse to hire, or to discharge

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any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment on the basis (in whole or in part) of such individual's sexual orientation.

- b. Employer -- Segregation. It shall be an unlawful employment practice for an employer to limit, segregate or classify employees or applicants for employment in any manner which would deprive or tend to deprive any individual of employment opportunities, or adversely affect his or her employment status on the basis (in whole or in part) of such individual's sexual orientation.

H. Aids Policy (Chapter 5, Article 2), San Diego Municipal Code, Division 95 (2/22/88). Prohibition of AIDS, ARC or ARS Related Discrimination.

1. Section 52.9504.

- a. Unlawful employment practices. It shall be an unlawful employment practice for any employer ... to do any of the following:
  - (1) Fail or refuse to hire or to discharge any person or otherwise to discriminate against any person with respect to compensation, terms, conditions or privileges of employment, including promotion, on the basis (in whole or in part) that such person has AIDS, ARC or ARS.
  - (2) Limit, segregate or classify employees or applicants for employment in any manner which would deprive or tend to deprive any person of employment opportunities or adversely affect his or her employment status on the basis (in whole or in part) that such person has AIDS, ARC or ARS.